



22 DEC 2006

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In re Application of	:	
CHENG et al.	:	
Application No.: 10/551,661	:	DECISION ON PETITION
PCT No.: PCT/US04/10027	:	UNDER 37 CFR 1.47(a)
Int. Filing: 01 April 2004	:	
Priority Date: 01 April 2003	:	
Attorney Docket No.: 102907-437-NP	:	
For: ADVANCED VERSATILE LAYOUT AND	:	
RENDERING SYSTEM, METHOD AND	:	
PRODUCT	:	

This decision is in response to applicants' "Petition under 37 CFR 1.47(a) For Filing on Behalf of Non-Signing Inventor(s)" filed 17 August 2006 to accept the application without the signature of joint inventor, Joseph Fusion. The \$200 petition fee has been submitted.

### BACKGROUND

On 01 April 2004, applicants filed international application PCT/US04/10027, which claimed a priority date 01 April 2003. Pursuant to 37 CFR 1.495, the period for paying the basic national fee in the United States expired 30 months from the priority date, 01 October 2005.

On 30 September 2005, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application.

On 26 May 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 17 August 2006, applicants filed the present petition under 37 CFR 1.47(a) and a petition for an one-month extension of time.

## DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. Items (1) - (4) have been satisfied.

Regarding item (2) above, Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47. Such a petition will be dismissed as inappropriate.

The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted.

Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Petitioner states that Joseph Fusion has refused to execute the application. A review of the present petition and the accompanying papers reveals that applicants have not satisfied item (2) above, in that, the showing of record is also consistent with the conclusion that Joseph Fusion simply moved to a new address and changed jobs. As such the 37 CFR 1.47 applicant would be obligated to make a diligent effort to locate the non-signing inventor. It is noted that petitioner fails to include evidence to demonstrate that the materials were actually received by the nonsigning inventor at his last known address.

Regarding item (4) above, only Lewis Chen executed the declaration on Joseph Fusion's behalf.

For the above reasons, it would not be appropriate to accept this application without the signature of Joseph Fusion at this time.

### CONCLUSION

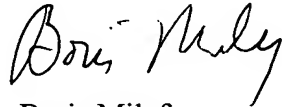
For reasons above, the petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

A proper response must be filed within TWO (2) MONTHS from the mail date of this decision. A proper response is either oath or declaration in compliance with 37 CFR 1.497 executed by Joseph Fusion, or a renewed petition under 37 CFR 1.47(a) overcoming the deficiencies indicated above. Extensions of term under 37 CFR 1.136(a) are available. Failure to timely file the proper response will result in ABANDONMENT. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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